IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1100 OF 2004

Smt.Vasumati Sachidanand Kalbag
alias Vasumati Chandrashekhar Barve .. Petitioner

v/s.

Smt.Vaishali Chandrashekhar Mankikar
& ors. .. .. Respondents

Mr.S.M.Gorwadkar for petitioner.

Mr.R.G.Ketkar for res.Nos.1 & 2.

Mr.Nimbkar for res.No.3.

CORAM : H.L. GOKHALE, J.

DATED : 28th June 2006

P.C. :

1. Heard the learned Counsel for the parties.

2. This petition is filed by a lady who claims to be the second wife of one Sachidanand Kalbag who died on 23rd March 1999. Respondent Nos.1 and 2 are the married daughters of this Sachidanand Kalbag from his first wife. This Sachidanand had taken a loan of an amount of Rs.4,25,000/- from respondent No.3 - Co-operative Bank sometime in the year 1998 for the purchase of a flat of around 800 sq. feet situated in the Chinchwad area. The petitioner claims to have been residing in that flat as the second wife of

this Sachidanand. She claims to have married him a couple of years before the flat being purchased. The flat was mortgaged to respondent No.3-Bank by way of protection for this loan and respondent Nos.4 and 5 herein were the guarantors. The case of respondent Nos.1 and 2 is that the petitioner was not married to their father and at the time when she claimed to have married, their mother was very much alive. They dispute the legality and validity of the so-called marriage between the petitioner and this Sachidanand.

3. The 3rd respondent-Bank filed a dispute in the Co-operative Court at Pune bearing No.231 of 2000 for recovery of the loan amount with interest. On the passing away of Sachidanand Kalbag, his two married daughters as well as the petitioner were joined as the respondents in that proceedings. It so transpired that this Sachidanand had kept certain amount in fixed deposit with the 3rd respondent-Bank. He had a savings bank account with the same bank and in October 2000 the amount lying in the fixed deposit and the savings bank account were to the tune of Rs.4,65,363.50. It appears that when the petitioner applied for joining as the respondent in the Co-operative dispute on the demise of

Sachidanand, respondent No.3-Bank filed a reply on 16th November 2000 and in para-2 thereof it specifically stated that it is vehemently denied that the petitioner was a legally married wife of the deceased. Even so, it appears that she was joined in the proceeding and thereafter she entered into an understanding with respondent No.3-Bank, whereby she agreed that the claim of the bank be settled by adjusting the amount from the fixed deposit receipts as well as the savings bank account and that the bank should not recover the loan by proceeding against the flat. In view of the petitioner consenting to such an arrangement, the bank applied on 5th July 2003 that it may be granted the permission to withdraw the dispute. It is material to note that the two married daughters i.e. respondent Nos.1 and 2 had not consented to any such arrangement. Yet, the Judge, Co-operative Court No.2, Pune, allowed that application by passing an order on 25th January 2001. This order records that opponent Nos.1A and 1B i.e. respondent Nos.1 and 2 herein, are married daughters. They appeared along with their Advocate in that dispute but had not filed their say. The remaining opponent No.1C i.e. the petitioner herein, had no objection to the adjustment which was proposed by the bank leading

to the withdrawal of the application. The learned Judge, therefore, allowed the application for withdrawal of the dispute and permitted the adjustment of the outstanding amount from the fixed deposit and the savings bank account towards the loan for which the dispute was filed.

4. Respondent Nos.1 and 2 herein carried that matter in revision to the Co-operative Appellate Court. The Co-operative Appellate Court allowed that appeal and set aside the impugned order passed by the trial Court. The Appellate Court noted that the bank was the creditor in respect of the loan. The deceased had not pledged the fixed deposit amount for securing that loan. The fixed deposit had no connection whatsoever with the loan transaction. The Court observed that the bank should not have made the kind of application that it made and the learned trial Judge should not have passed the order that he has passed. The learned Appellate Judge set aside the order of the Co-operative Court and directed the bank to restore the fixed deposit.

5. Consequently, the original dispute stands restored and the bank will have to proceed with it. The bank has not challenged this order,

though it has been passed way back on 23rd July 2003. It is this order which is challenged by the present petitioner.

6. Mr.Gorwadkar, learned Counsel appearing for the petitioner, submits that inasmuch as the petitioner was the married wife of the deceased Sachidanand, she had entered into the settlement with the bank and the bank which was the creditor was agreeable for the kind of adjustment which was arrived at between her and the bank. He further submits that respondent Nos.1 and 2, who are the married daughters of Sachidanand, were parties to the proceedings and as noted by the learned trial Judge, they had not filed their say. He submitted that the order which was passed was in the interest of justice. In his submission, this will be only a part of the share of the petitioner and in fact she has a larger claim in the property of the deceased, for which she has filed a suit in the Civil Court at Pune.

7. Mr.Nimbkar appearing for respondent No.3 has also supported the submissions of Mr.Gorwadkar. According to him, what was done was correct and was with a view to realize the monies of the bank when the second wife was agreeing for

the particular adjustment.

8. Mr.Ketkar appearing for respondent Nos.1 and 2, on the other hand, pointed out that the kind of order which the trial Court passed, should not have been passed. The fixed deposit receipts were not pledged as security for the loan, from which the flat was purchased. The flat had been mortgaged. Respondent Nos.1 and 2 were parties to that proceedings. The bank or the Court ought to have obtained their consent and in the absence of it, the trial Court's order was bad in law and was rightly set aside by the Appellate Court.

9. I have noted the submissions of the learned Counsel for the parties. In my view, the Appellate Court was undoubtedly correct in coming to the conclusion that the bank had a remedy to proceed against the flat and if it wanted, it could proceed against it and recover the loan amount. Surely, the consent of the married daughters, who are parties to the very proceedings, was necessary if other properties and deposits were to be proceeded against. In the absence thereof, the kind of order which was passed by the trial Court, was unsustainable.

10. In the circumstances, I do not find any merit in the petition which seeks to invoke the jurisdiction of this Court under Article 227 of the Constitution of India. There is no error of law or miscarriage of justice in the order that has been passed. The petition is, therefore, dismissed.

11. Mr.Gorwadkar appearing for the petitioner expresses the anxiety that with this order, the bank may proceed against the flat wherein the petitioner is residing. She has already filed a suit for claiming her rights. It is for her to seek the appropriate reliefs in that suit. Even if the bank decides to proceed against the flat, there is the appropriate procedure which the bank will have to follow. All this breathing period will be available to the petitioner to safeguard her interest.

(H.L. GOKHALE, J.)